

Univar

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FILE COPY

Nov 29, 2006

**Subject: Oregon Enforcement Penalty
Case**

From: Mike Slater

A handwritten signature in black ink, appearing to be "MS" or similar initials, written over the name "Mike Slater".

**To: Howard Orlean
Barbara McCullough
Kevin Schanilec
RCRA Records Center**

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Office of Air, Waste & Toxics

Sections II and III of the enclosed Notice. In the Answer, Univar should also allege all affirmative defenses and provide reasons why they apply in this matter. Univar will not be allowed to raise these issues at a later time, unless Univar can show good cause for failing to raise them in the Answer.

The steps Univar must follow to request a review of the Department's allegations and determinations in this matter are set forth in Section V of the enclosed Notice and in OAR 340-011-0530 and 137-003-0528. Univar needs to follow the rules to ensure that it does not lose the opportunity to dispute the Department's findings.

If the Department does not receive a request for a hearing and Answer within **twenty** calendar days from the date that Univar receives the enclosed documents, the Department will issue a Default Order and the civil penalty assessment will become final and enforceable. Univar can fax a request for hearing and Answer to the Department at 503-229-6762.

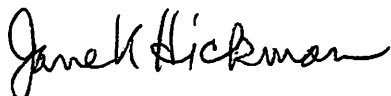
If Univar wishes to discuss this matter, or believes there are mitigating factors the Department might not have considered in assessing the civil penalty, a request for an informal discussion may be attached to the appeal. A request to discuss this matter with the Department does not waive the right to a contested case hearing.

I look forward to Univar's cooperation in complying with Oregon environmental law in the future. If, however, any additional violations occur, Univar may be assessed additional civil penalties.

Copies of referenced rules are enclosed. Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If Univar is interested in having a portion of the civil penalty fund an SEP, Univar should review the enclosed SEP directive.

If Univar has any questions about the Notice, please contact Jeff Bachman with the Department's Office of Compliance and Enforcement at 503-229-5950 or toll-free at 1-800-452-4011, extension 5950.

Sincerely,



Jane K. Hickman, Administrator
Office of Compliance and Enforcement

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Enclosures

cc: Rebecca Paul, Northwest Region, DEQ
Mike Kortenhopf, Northwest Region, DEQ
Dick Pedersen, Northwest Region, DEQ

Univar USA, Inc.
Case No. LQ/HW-NWR-06-196
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cc cont'd: Land Quality Division, HQ, DEQ
 Larry Knudsen, Department of Justice, Portland Office
 Environmental Protection Agency
 Environmental Quality Commission
 Multnomah County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
UNIVAR USA, INC.,
a Washington corporation,

Respondent.

) NOTICE OF VIOLATION AND
) CIVIL PENALTY ASSESSMENT

) NO. LQ/HW-NWR-06-196
) MULTNOMAH COUNTY
) ORD 009227398

I. AUTHORITY

This Notice of Violation and Civil Penalty Assessment (Notice) is issued by the Department of Environmental Quality (Department) to Respondent, Univar USA, Inc., a Washington corporation, pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140 and ORS 466.990, ORS Chapter 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS

1. Respondent operates a chemical distribution facility at 3950 N.W. Yeon Avenue, Portland, Oregon.

2. In 2005, Respondent was a registered large-quantity generator of hazardous waste (Hazardous Waste Generator Identification Number ORD 009227398).

3. Representatives of the Department conducted a compliance inspection at Respondent's facility on June 8 and 12, 2006.

III. VIOLATIONS

Based upon the foregoing findings of fact and above-noted inspection, Respondent has violated the following provisions of Oregon's hazardous waste laws and regulations applicable to the facility as set forth in ORS Chapter 466 and OAR Chapter 340, Divisions 100 to 110 and 120, including regulations incorporated in OAR 340-100-0002 adopted pursuant to ORS Chapter 466:

CLASS I VIOLATIONS

1. On each and every day from on or about October 24, 2005, through June 8, 2006, Respondent violated OAR 340-102-0011(2) by failing to make a hazardous waste determination. Specifically, Respondent failed to determine whether four 55-gallon drums of rinseate, generated when a

1 tank of Woodlife F pesticide was emptied, and a 15-gallon container of pesticide were hazardous
2 wastes. These are Class I violations pursuant to OAR 340-012-0068(1)(a).

3 2. On each and every day from on or about July 29, 2005, and from on or about January 15,
4 2006, through June 12, 2006, Respondent violated 40 Code of Federal Regulations (CFR) 262.34(a) by
5 storing hazardous waste longer than 90 days. Specifically, Respondent stored two 55-gallon containers
6 of waste solvent, an ignitability characteristic hazardous waste (Hazardous Waste Code D001) for more
7 than 90 days. Storage of one container began on April 29, 2005 and continued for 410 days. Storage of
8 the second container began on October 15, 2005, and continued for 240 days. These are Class I
9 violations pursuant to OAR 340-012-0068(1)(d).

10 IV. ASSESSMENT OF CIVIL PENALTY

11 The Director imposes a civil penalty for the violations cited in Section III, above, as follows:

<u>Violation</u>	<u>Penalty Amount</u>
13 1	\$3,600
14 2	\$3,800

15 Respondent's total civil penalty is \$7,400. The findings and determination of Respondent's civil
16 penalty, pursuant to OAR 340-012-0045, are attached and incorporated as Exhibits 1 and 2.

17 V. OPPORTUNITY FOR CONTESTED CASE HEARING

18 Respondent has the right to have a contested case hearing before the Environmental Quality
19 Commission (Commission) or its hearings officer regarding the matters contained in this Notice,
20 provided Respondent files a written request for a hearing and an answer **within twenty (20) calendar**
21 **days from the date of service of this Notice.** Pursuant to OAR 340-011-0530(4), if Respondent fails to
22 file a timely request for a hearing, the late filing will not be allowed unless the late filing was beyond
23 Respondent's reasonable control. Pursuant to OAR 137-003-0528(1), if Respondent fails to file a timely
24 answer, the late filing will not be allowed unless Respondent can show good cause for the late filing.

25 The request for a hearing must either specifically request a hearing or state that Respondent
26 wishes to appeal this Notice. In the written answer, Respondent must admit or deny each allegation of
27 fact contained in this Notice, and must specifically state all affirmative defenses to the assessment of the

1 civil penalty that Respondent may have and the reasoning in support of any defenses. The contested case
2 hearing will be limited to those issues raised in this Notice and in the answer. Unless Respondent is able
3 to show good cause:

- 4 1. Factual matters not denied in a timely manner will be considered admitted;
- 5 2. Failure to timely raise a defense will waive the ability to raise that defense at a later time;
- 6 3. New matters alleged in the answer will be presumed to be denied by the Department
7 unless admitted in subsequent pleading or stipulation by the Department or Commission.

8 Send the request for hearing and answer to: **Deborah Nesbit, Oregon Department of**
9 **Environmental Quality, 811 S.W. 6th Avenue, Portland, Oregon 97204 or via fax at 503-229-6762.**
10 Following the Department's receipt of a request for hearing and an answer, Respondent will be notified
11 of the date, time and place of the hearing.

12 Failure to file a timely request for hearing or an answer may result in the entry of a Default Order
13 for the relief sought in this Notice.

14 Failure to appear at a scheduled hearing may result in an entry of a Default Order.

15 The Department's case file at the time this Notice was issued may serve as the record for
16 purposes of entering a Default Order.

17 VI. OPPORTUNITY FOR INFORMAL DISCUSSION

18 In addition to filing a request for a contested case hearing, Respondent may also request an
19 informal discussion with the Department by attaching a written request to the hearing request and
20 Answer.

21 VII. PAYMENT OF CIVIL PENALTY

22 The civil penalty is due and payable ten (10) days after the Order imposing the civil penalty becomes
23 final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's
24 check or money order in the amount of \$7,400 should be made payable to "State Treasurer, State of

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1 Oregon" and sent to the Business Office, Department of Environmental Quality, 811 S.W. Sixth
2 Avenue, Portland, Oregon 97204.

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4 November 14, 2006
5 Date

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Jane K. Hickman
Jane K. Hickman, Administrator
Office of Compliance and Enforcement

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Failing to perform hazardous waste determinations pursuant to OAR 340-102-0011(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0068(1)(a).

MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(3)(a)(C) as the violations involved two waste streams.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(I)(i).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 4 pursuant to OAR 340-012-0145(2)(a) and -0145(2)(d)(A)(ii). Respondent has seven Class I equivalent prior significant actions, as documented in Case No. HW-NWR-96-329, for an initial "P" value of 8. This value is reduced by 4 because the prior significant actions are more than five years old for a final "P" value of 4.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 pursuant to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violation.

"O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(a)(D), because the violation continued for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 2 pursuant to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. As a large-quantity generator of hazardous waste, Respondent is a heavily regulated entity. Respondent has a duty to ascertain and comply with all applicable regulations relating to hazardous waste and hazardous material. Respondent knows of its responsibility to perform hazardous waste determinations on all wastes it generates. Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct the violation and receives a value of -1 pursuant to OAR 340-012-0145(6)(a)(C), because the violation was eventually corrected.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 because Respondent received no more than a de minimis economic benefit by failing to timely perform the hazardous waste determinations.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (4 + (-)1 + 4 + 2 + (-)1)] + \$0 \\ &= \$2,000 + [(\$200 \times 8)] + \$0 \\ &= \$2,000 + \$1,600 + \$0 \\ &= \$3,600\end{aligned}$$

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Storing hazardous waste longer than 90 days in violation of 40 CFR 262.34(a), adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(d).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(3)(c)(C) as the violation involved less than 250 gallons of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(I)(i).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 4 pursuant to OAR 340-012-0145(2)(a) and -0145(2)(d)(A)(ii). Respondent has seven Class I equivalent prior significant actions, as documented in Case No. HW-NWR-96-329, for an initial "P" value of 8. This value is reduced by 4 because the prior significant actions are more than five years old for a final "P" value of 4.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 pursuant to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violation.

"O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(a)(D), because the violation continued for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 2 pursuant to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. As a large-quantity generator of hazardous waste, Respondent is a heavily regulated entity. Respondent has a duty to ascertain and comply with all applicable regulations relating to hazardous waste and hazardous material. Respondent knows of its responsibility to dispose of hazardous wastes within 90 days, but through inattention allowed the wastes at issue in this violation to accumulate for more than twice the allowable period. Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct the violation and receives a value of 0 pursuant to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 because Respondent received no more than a de minimis economic benefit by delaying the cost of transporting the waste to a permitted treatment, storage or disposal facility.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (4 + (-)1 + 4 + 2 + 0)] + \$0 \\ &= \$2,000 + [(\$200 \times 9)] + \$0 \\ &= \$2,000 + \$1,800 + \$0 \\ &= \$3,800\end{aligned}$$